

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION I

CA 05-1258

June 14, 2006

LERONDRIA MONTGOMERY
APPELLANT

AN APPEAL FROM PULASKI
COUNTY CIRCUIT COURT
[JJN04-1351]

V.

HON. WILEY A BRANTON, JUDGE

ARKANSAS DEPARTMENT
OF HUMAN SERVICES
APPELLEE

REBRIEFING ORDERED

This is a no-merit appeal from an order terminating the parental rights of Lerondria Montgomery, whose three children were placed in the custody of appellant's mother, Audrey Montgomery, in 2001. We remand for rebriefing because counsel failed to explain why an adverse ruling that occurred during the termination hearing would not support a meritorious appeal.

On an appeal from an order terminating parental rights, counsel may petition to withdraw as counsel if, after a conscientious review of the record, he can find no issue of arguable merit for appeal. *Linker-Flores v. Arkansas Dep't of Human Servs.*, 359 Ark. 131, __ S.W.3d __ (Oct. 7, 2004) (*Linker-Flores I*). Counsel's petition for withdrawal must be accompanied by a brief discussing any arguably meritorious issue for appeal. *Id.* More specifically, counsel's brief must analyze each ruling adverse to his client that was made on any objection, motion, or request made by any party and must provide an explanation as to why each ruling is not a meritorious ground for reversal. *Causer v. Arkansas Dep't of Human Servs.*, __ Ark. App. __, __ S.W.3d __ (Dec. 14, 2005). If counsel fails to explain why each

adverse ruling does not provide a meritorious basis for an appeal, the appellate court will remand for rebriefing. *Id.*

We remand for rebriefing in this case because our review of the record as a whole reveals that appellant's counsel failed to address an adverse ruling. This ruling occurred at the beginning of the termination hearing, when appellant's counsel filed a motion for a continuance, which was joined by Audrey's counsel, Ms. Lumpkin, as well as Ms. Free, counsel for the father of one of appellant's sons. This joint request was based on: 1) the "shake-up" at the Arkansas Department of Human Services (ADHS) that was due to the fact that the caseworker on appellant's case, Juanita Lloyd, left ADHS one month prior to the hearing; 2) the assertion that ADHS had not offered appellant reasonable services, in part, due to the "shake-up"; 3) the fact that appellant's therapist, who agreed to testify, was not present. Ms. Free further informed the court that none of the attorneys had been notified that Lloyd left the agency nor had they been notified as to the identity of the new caseworker, and that she (Ms. Free) had left messages which were sent to Lloyd's voice mail, which remained active even though Lloyd was no longer employed with the agency. The court denied the request for a continuance because of the length of time the case had been pending but indicated that it would leave the record open to secure the testimony of additional witnesses, if necessary.

Appellant's counsel is correct that the denial of the motion for a continuance based on the need for the appellant's therapist's testimony ultimately was not an adverse ruling because the therapist later appeared and testified. Further, counsel also adequately addresses the reasonable-efforts issue. However, we remand for rebriefing because counsel does not explain why a meritorious appeal would not lie from the denial of that portion of appellant's request for a continuance that was based on "the shake-up" at ADHS and ADHS's failure to inform the parties' attorneys that the caseworker had left the agency.

Rebriefing ordered.

PITTMAN, C.J., agrees.

HART, J., concurs.